

CHAPTER NO. 881

SENATE BILL NO. 3310

By Clabough, Cooper

Substituted for: House Bill No. 3235

By Huskey, Rhinehart, Mike Walker

AN ACT To amend Tennessee Code Annotated, Section 62-13-104, relative to vacation or transient rentals of residential units.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-13-104, is amended by deleting the punctuation "." at the end of subdivision (6) and substituting instead the words and punctuation ";or".

SECTION 2. Tennessee Code Annotated, Section 63-13-104, is further amended by adding the following new subdivision:

(7) The services performed by a vacation lodging business pursuant to Tennessee Code Annotated, Section 62-13-104(b).

SECTION 3. Tennessee Code Annotated, Section 62-13-104, is further amended by redesignating the existing language as Section 62-13-104(a).

SECTION 4. Tennessee Code Annotated, Section 62-13-104, is further amended by adding the following language to be designated subsection (b):

(1) As used in this chapter, unless the context otherwise requires:

(A) "Person" means any natural person, corporation, company, partnership, firm or association; and

(B) "Vacation lodging service" means any person who engages in the business of providing the services of management, marketing, booking and rental of residential units owned by others as sleeping accommodations furnished for pay to transients or travelers staying not more than fourteen (14) days.

(2) Each vacation lodging service shall be required to have a firm license but shall not be required to have a licensed real estate broker supervising such business. The application for such license shall be filed in the office of the Real Estate Commission on such forms as the commission may prescribe and shall be accompanied by a fee for the issuance of such license as specified in Section 62-13-308. A real estate firm license held by a real estate broker is deemed to satisfy the license requirements of Section 63-13-104 (b).

(3)(A) Firm licenses for vacation lodging services shall be granted to all applicants who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of providing vacation lodging services in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been

presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin.

(B) Upon application for a firm license for a vacation lodging service and each renewal thereof, the firm shall designate one individual from that firm who shall be responsible for the completion of training programs consisting of instruction in the fundamentals of Section 63-13-104(b) and related topics. Every two (2) years, as a requisite for the reissuance of a firm license for a vacation lodging service, the firm shall furnish certification of completion of eight (8) classroom hours in training programs approved by the commission. No examination shall be required for the issuance or renewal of a firm license for a vacation lodging service.

(C) Upon application for a firm license for a vacation lodging service and each renewal thereof, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission. Every firm shall, in accordance with the rules promulgated by the commission under Section 62-13-203, keep an escrow or trustee account of funds deposited with the firm relating to vacation lodging services. The vacation lodging service shall maintain for a period of at least three (3) years accurate records of such account showing:

- (i) The depositor of the funds;
- (ii) The date of deposit;
- (iii) The date of withdrawal;
- (iv) The payee of the funds; and
- (v) Such other pertinent information as the commission may require.

(4) All firm licenses for vacation lodging services shall expire on December 31 of each even-numbered year, and shall be invalid on that date unless renewed. Such licenses may be renewed on or before the expiration date by remitting to the commission the fee as set by the commission along with proof of the existence of the firm's escrow account satisfactory to the commission and certification of satisfactory completion of training pursuant to Section 62-13 - 104(b)(3)(B).

(5) Each vacation lodging service shall have an office at a fixed location with adequate facilities, located to conform with zoning laws and ordinances. Within ten (10) days after any change of location of such office, the vacation lodging service shall notify the commission in writing of the new business address.

(6) Whenever any person claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business of providing vacation lodging services files suit upon such claim against such licensee in any court of record in this state and recovers judgment thereon, such court may as a part of its judgment or decree in such cases, if it deems it a proper case in which so to do, revoke the certificate of license granted hereunder, and such certificate

of license shall not be reissued to such licensee except upon the consenting vote of six (6) members in favor of such reissuance.

(7)(A) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain facts and, if warranted, hold a hearing for reprimand, or for the suspension or revocation of a license.

(B) The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(i) Making any substantial and willful misrepresentation;

(ii) Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep such promise;

(iii) Pursuing a continued and flagrant course of misrepresentation or making of false promises through other persons, any medium of advertising, or otherwise;

(iv) Misleading or untruthful advertising, including use of the term "Realtor" by a person not authorized to do so, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member. No vacation lodging service doing business under the provisions of Section 62-13-104(b) may advertise or hold itself out as a full service real estate business. The authority of such business is limited to those activities described within this subsection;

(v) Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others;

(vi) Failing to preserve for three (3) years accurate records of the firm's escrow account as prescribed by Section 62-13-104(b)(3)(C);

(vii) Failing to furnish a copy of any contract to provide vacation lodging services to all signatories thereof at the time of execution;

(viii) Using or promoting the use of any contract to provide vacation lodging services for a residential unit which fails to specify a definite termination date;

(ix) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense

or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

(x) Violating any federal, state, or municipal law prohibiting discrimination in the rental of real estate because of race, color, religion, sex or national origin;

(xi) Violating any provision of this subsection or the terms of any lawful order entered by the commission;

(xii) Engaging in the unauthorized practice of law; or

(xiii) Any conduct, whether of the same or a different character from that hereinbefore specified, which constitutes improper, fraudulent or dishonest dealing.

(C) The Director of the Division of Regulatory Boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy such books, accounts, documents, or records as are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts herein required. In the case of refusal to permit the access accorded by this subsection, the director or the director's authorized representatives may pursue the remedies provided by Section 4-5-311(b) for disobedience to any lawful agency requirement for information. Such refusal shall also constitute grounds for the commission to suspend or revoke a license.

(D) Whenever any licensee pleads guilty or is convicted of any criminal offense enumerated in this section, the licensee must within sixty (60) days notify the commission of that conviction and provide the commission with certified copies of the conviction. The licensee's license shall automatically be revoked sixty (60) days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that sixty (60) day period. Following any such hearing held pursuant to this section, the commission in its discretion may impose upon that licensee any sanction permitted by this section.

(8)(A)(i) Before refusing to issue a license or suspending or revoking an existing license upon the verified written complaint of any person setting out a cause of action under Section 62-13-104(b)(7), the commission shall, in writing, notify the accused applicant or licensee of its receipt of the complaint, enclosing a copy.

(ii) The accused applicant or licensee shall, within ten (10) days, file with the commission the applicant's or licensee's answer to the complaint, a copy of which shall be transmitted to the complainant.

(iii) If, after investigation, the commission determines that the matter should have a hearing, a time and place therefor shall be set.

(B) All notices and answers required or authorized to be made or filed under this subsection may be served or filed personally, or by


registered mail, to the last known business address of the addressee. If served personally, the time shall run from the date of service and if by registered mail, from the postmarked date of the letter enclosing the document.

(C) The affirmative vote of a majority of the commission shall be necessary to reprimand a licensee or revoke or suspend a license.

(D) In the event that the matter contained in the complaint shall have been filed or made a part of a case pending in any court in this state, the commission may then withhold its decision until the court action has been concluded.

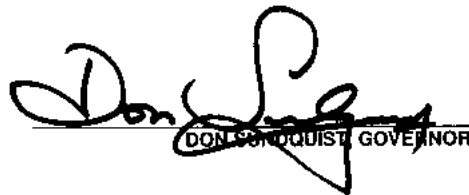
SECTION 5. For purposes of administration, including but not limited to the licensure process, promulgation of rules and regulations and the development and completion of training courses, this act shall take effect July 1, 1998, and for purposes of the actual issuance of firm licenses for vacation lodging services, this act shall take effect January 1, 1999, the public welfare requiring it.


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

PASSED: April 22, 1998

APPROVED this 6th day of May 1998


DON SUNDQUIST, GOVERNOR